(3)

No. 96-1270

Supreme Court, U.S.
FILED
MAR 24 1997
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

TEI FU CHEN and THE SUNRIDER CORPORATION,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

PETITIONERS' REPLY BRIEF

VINCENT J. MARELLA
JASON D. KOGAN *
BIRD, MARELLA, BOXER,
WOLPERT & MATZ
A Professional Corporation
1875 Century Park East
23rd Floor
Los Angeles, California 90067
(310) 201-2100
* *Counsel of Record for Tei Fu Chen and The Sunrider Corporation*

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

4 pp

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

No. 96-1270

TEI FU CHEN and THE SUNRIDER CORPORATION,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

PETITIONERS' REPLY BRIEF

INTRODUCTION

In its opposition brief, the government acknowledges that it has intruded into petitioners' relationship with their attorneys—that it has invaded a relationship that is founded on the highest degree of trust, confidence, and privacy. Yet the government fails to admit that this is only the latest case in which it has violated individuals' attorney-client privilege in this way. The government also ignores the fact that there is a remedy for its violation of petitioners' rights, implying instead that petitioners' petition is undeserving of consideration because there is no issue left for this Court to decide.

The Court should grant petitioners' petition. Doing so will afford meaningful relief to petitioners and will put an unequivocal end to the government's repeated violation

of the law. If the Court does not step in, it will effectively grant the government permission to continue to engage in a course of improper conduct that not only strikes at the heart of the attorney-client relationship but that has, until now, gone unpunished.

ARGUMENT

The government prides itself on the completeness and accuracy of its briefs. Yet its brief in opposition fails to discuss, or even mention, the most salient reason for granting the petition of Tei Fu Chen and The Sunrider Corporation. *See* Pet. 4-5. It is not simply the case that the United States Attorney's Office for the Central District of California improperly submitted to the district court for analysis under *Zolin* material that was protected by the attorney-client privilege. *United States v. Zolin*, 491 U.S. 554, 109 S. Ct. 2619 (1989). That would be bad enough, but what the United States Attorney's Office did was far worse: it improperly submitted the privileged material to the district court after the Ninth Circuit had already reproved it in a prior case for having done exactly the same thing. It is therefore not the case that the government did not know what the law required, or even that the government made an honest mistake. The very same office had previously been chastised by the very same court for having engaged in the very same improper conduct. Pet. App. 15a.

The Ninth Circuit's opinion offers no remedy for the government's continued wrongful actions. It allows the government to repeatedly expose revelations that clients expect their attorneys to keep forever in the strictest confidence. It allows the government again and again to intrude into a relationship of absolute trust and privacy. It permits the government to be the final—indeed, the only—decisionmaker as to what material is privileged and what may, without repercussion, be disclosed.

The government's brief in opposition also implies that there is no relief available to the petitioners because "it is

too late to quash the subpoenas." Opp. 7. Petitioners' request for relief, however, remains live. The government has indicated that it may use at trial James Wilets' grand jury testimony.[1] In addition, the government may have obtained evidence through information it derived from Mr. Wilets' testimony. Permitting the government to use this material at trial will reward it for having improperly elicited petitioners' privileged confidences. Quashing the subpoenas to the two attorneys is the functional equivalent of barring the government from using such material at trial. Quashing the subpoenas is therefore an appropriate remedy that would adequately sanction the government's continued violation of the law.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

VINCENT J. MARELLA
JASON D. KOGAN *
BIRD, MARELLA, BOXER,
WOLPERT & MATZ
A Professional Corporation
1875 Century Park East
23rd Floor
Los Angeles, California 90067
(310) 201-2100
* *Counsel of Record*
for Tei Fu Chen and
The Sunrider Corporation

[1] The government wrongly states that "both attorneys have appeared before the grand jury." Opp. 7. Mr. Cox never appeared before the grand jury in this case.